

SMITH & LOWNEY, P.L.L.C.  
2317 EAST JOHN STREET  
SEATTLE, WASHINGTON 98112  
(206) 860-2883, FAX (206) 860-4187

August 30, 2016

*Via Certified Mail – Return Receipt Requested*

Citizen Suit Coordinator  
Environment and Natural Resources Division  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, DC 20044-7415

**RECEIVED ON:**

SEP 02 2016

ORC

EPA Region 10  
Office of the Regional Administrator

*Via Certified Mail – Return Receipt Requested*

Administrator Gina McCarthy  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460

*Via First Class Mail*

Administrator Dennis McLerran  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Ave., Ste. 900  
Seattle, WA 98101

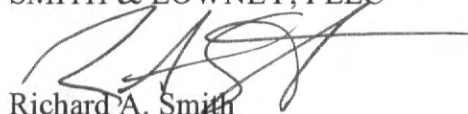
Re: Sno-King Watershed Council, et al., v. Snohomish County; W.D. Wash. No. 16-318JCC

Dear Honorable Civil Servants:

Please find enclosed the proposed consent decree for the above-named Clean Water Act citizen suit. The motion for entry of the consent decree has been noted to allow time for your statutory 45-day review.

Sincerely,

SMITH & LOWNEY, PLLC



Richard A. Smith  
Attorneys for Plaintiff

RECEIVED ON:

SEP 02 2016

Office of the Regional Administrator  
EPA Region 10  
CSC

HON. JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SNO-KING WATERSHED COUNCIL; and  
WASTE ACTION PROJECT,

Plaintiffs,

v.

SNOHOMISH COUNTY.,

Defendant.

Case No. 16-318JCC

**CONSENT DECREE**

**I. STIPULATIONS**

Plaintiffs sent a sixty-day notice of intent to sue letter to Defendant Snohomish County on December 21, 2015, alleging violations of the Clean Water Act, 33 U.S.C. § 1251 et seq., relating to development and management of two sites adjacent to wetlands and located on land owned by Paine Field/Snohomish County Airport, Snohomish County, Washington and seeking declaratory and injunctive relief, civil penalties and attorney's fees and costs.

The parties agree that settlement of these matters is in the best interest of the parties and the public, and that entry of this Consent Decree is the most appropriate means of resolving this action.

The parties stipulate to the entry of this Consent Decree without trial, adjudication, or

1 admission of any additional issues of fact or law regarding Plaintiffs' claims or allegations set  
2 forth in their complaint and sixty-day notice.

3 DATED this August 29, 2016

4 SNOHOMISH COUNTY

SNO-KING WATERSHED COUNCIL

5 By: [Signature]

6 Title: Executive

7 By [Signature]

8 WASTE ACTION PROJECT

Title: Sno-King Watershed Council Board Member

9 By: [Signature]

10 Title: Executive Director

11  
12 **II. ORDER AND DECREE**

13 THIS MATTER came before the Court upon the Parties' Joint Motion for Entry of  
14 Consent Decree and the foregoing Stipulations of the parties. Having considered the Stipulations  
15 and the promises set forth below, the Court hereby ORDERS, ADJUDGES, and DECREES as  
16 follows:

- 17 1. This court has jurisdiction over the parties and subject matter of this action.
- 18 2. Each signatory for the parties certifies for that party that he or she is authorized to  
19 enter into the agreements set forth below.
- 20 3. This Consent Decree applies to and binds the parties and their successors and  
21 assigns.
- 22 4. This Consent Decree applies to the operation, oversight, or both by Defendant of  
23 activities at the two sites, located at 2600 100th Street SW, Everett, WA 98204, on the south side  
24 of 100th St. SW, between Airport Road to the west and 23rd Ave. W. to the east. The first site,  
25 "Site 1," comprises approximately seven acres within Tax Parcel Nos. 28042300201800,  
26

1 28042300201900, 28042300202000 and 28042300202100. Site 1 is a roughly rectangular shape,  
2 and is immediately adjacent to and east of the second site, "Site 2." Site 2 comprises  
3 approximately four acres within Tax Parcel No. 28042300201800, within a roughly square shape.  
4 Both sites are owned by defendant Snohomish County and front directly on 100th St. SW, and are  
5 depicted in Attachment A to this Consent Decree.

6 5. This Consent Decree is a full and complete settlement of the claims in the  
7 complaint and all other claims known and unknown existing as of the date of entry of this  
8 Consent Decree, that could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387,  
9 arising from conditions and activities at Site 1 and Site 2. These claims are released and dismissed  
10 with prejudice. Enforcement of this decree is Plaintiffs' exclusive remedy for any violation of its  
11 terms.

12 6. This Consent Decree is a settlement of disputed facts and law. It is not an  
13 admission or adjudication regarding any allegations by Plaintiffs in this case or of any fact or  
14 conclusion of law related to those allegations.

15 7. The parties agree to the following terms and conditions in full and complete  
16 satisfaction of the claims covered by this decree:

17 A. Snohomish County will immediately withdraw or cause to be withdrawn the following  
18 applications for permits or modifications of permits currently pending before the Snohomish  
19 County Department of Planning and Development Services ("PDS"):

- 20 i. Permit application #15-107054 LDA Paine Field Wetland ERR;  
21 ii. Permit application #15-107054 WMD Paine Field Wetland ERR; and  
22 iii. Permit #16-100848 LDA (100<sup>th</sup> Street SW Parking Lot).

23 B. Not later than ten days following the entry of this Consent Decree, the County will  
24 submit a letter to the Washington State Department of Ecology and the Pollution Control  
25 Hearing Board withdrawing the Paine Field Wetland ERR Project approved by Ecology in  
26 Administrative Order number 11627; the County will submit a letter to the U.S. Army



1 Corps of Engineers withdrawing the Paine Field Wetland ERR Project approved by Corps  
2 permit number NWS-2014-796; and the County will submit a letter to the Washington  
3 Department of Fish and Wildlife withdrawing its Hydraulic Project Approval permit  
4 number 2015-4-569+01. The County will transmit copies of these letters to Plaintiffs.

5 C. The County will ensure the following tasks are performed at Site 2 by October 15, 2016:

- 6 i. Remove all straw and any remaining crushed rock.  
7 ii. Till and amend the soil in Site 2 consistent with Snohomish County Drainage  
8 Manual (2016 edition) Best Management Practice T5.13.  
9 iii. Hydroseed Site 2 consistent with Snohomish County Drainage Manual (2016  
10 edition) Best Management Practice C120: Temporary and Permanent Seeding, Vol. II.  
11 The Airport shall use Snohomish County Airport/Paine Field Hydroseed mix ("Airport  
12 Hydroseed"), comprised of (by weight) 3-Way Golf Course Ryegrass Blend (60%),  
13 Chewing Fescue (25%), and Creeping Fescue (15%). At the same time Site 2 is  
14 hydroseeded, bonded fiber matrix also will be applied.  
15 iv. Once the site has stabilized, remove all temporary erosion control measures,  
16 including straw wattles, silt fences, and compost socks in adjacent ditches.

17 D. The County will provide written or electronic notice to Plaintiffs once all actions under  
18 permit #15-102936 have been completed. PDS and Plaintiffs will schedule a mutually  
19 agreeable date for PDS to conduct a final inspection of Site 2. Plaintiffs may attend the final  
20 inspection of Site 2. PDS has final authority over whether to approve the final inspection.

21 E. The County will cause appropriate temporary stabilization best management practices to  
22 be effectively implemented at Site 1, pending full site restoration.

23 F. The County will ensure a new land disturbing activity (LDA) permit application for  
24 remediation of Site 1 is promptly submitted to PDS. The application will contain the following  
25 items:

- 26 i. Remove all crushed rock surfacing, except for that area described in F.iv. below.

1           ii. Till and amend the soil in Site 1 consistent with Snohomish County Drainage  
2 Manual (2016 edition) Best Management Practice T5.13, except for that area described  
3 in F.iv. below. The grading of Site 1 will be engineered in a manner intended not to  
4 create standing water that may attract water fowl.

5           iii. Prior to October 15, 2016, hydroseed the area in Site 1, except for that area  
6 described in F.iv. below, consistent with Snohomish County Drainage Manual (2016  
7 edition) Best Management Practice C120: Temporary and Permanent Seeding, Vol. II.  
8 The County will use Airport Hydroseed.

9           iv. Site 1 is subject to a lease with Verizon Wireless for non-exclusive access between  
10 the Verizon cell tower proposal approved by permit #14-110886 (Verizon Wireless  
11 Sector 3 Paine Field) and public right-of-way. The LDA permit application for  
12 remediation of Site 1 will provide for the continued existence of a gravel access road  
13 sited in compliance with SCC 30.62A.320(1)(a) through (h) and (2); however, the  
14 location of the gravel access road may differ from the location depicted in permit #14-  
15 110886 as determined by the County.

16       G. Upon issuance of the new LDA permit for Site 1, the County will act in good faith to  
17 complete all work approved in the permit by October 15, 2016. However, if such work is not  
18 completed by October 15, 2016, Site 1 soils will be stabilized no later than October 15, 2016,  
19 for the duration of the wet season through April 30, 2017. All work approved in the new LDA  
20 permit for Site 1 shall be completed by no later than October 1, 2017. To increase the  
21 probability that work can be completed by October 15, 2016, Plaintiffs agree not to file any  
22 administrative or legal appeals related to issuance of the new LDA permit for Site 1.

23       H. The County will provide written or electronic notice to Plaintiffs once all actions under the  
24 new LDA permit for Site 1 have been completed. PDS and Plaintiffs will schedule a mutually  
25 agreeable date for PDS to conduct a final inspection of Site 1. Plaintiffs may attend the final  
26 inspection of Site 1. PDS has final authority over whether to approve the final inspection.

1 I. The County will promptly execute and record a conservation easement, included as  
2 Attachment B to this Consent Decree, to preclude the use of Wetland ERR or any part thereof  
3 as a stormwater detention holding pond or for any other project that would impair Wetland  
4 ERR's values or functions. The property subject to the conservation easement is depicted in  
5 Attachment B, Ex. B. The required performance of this term is subject to two contingencies:  
6 (1) the initial agreement and release of the property from federal obligations by the Federal  
7 Aviation Administration (FAA), which the County will use its best efforts to obtain without  
8 delay; and (2) future demand by Sound Transit for use of all or part of Wetland ERR for  
9 regional transportation infrastructure. If the FAA does not release the property from federal  
10 obligations, the County is discharged from performing this term upon prompt notice to  
11 Plaintiff, and will instead, within sixty days of recognizing that the FAA has withheld release,  
12 pay an additional \$50,000 (FIFTY THOUSAND DOLLARS) to EarthCorps towards the  
13 environmental benefit project described in paragraph 8 of this Consent Decree, which funds  
14 may be expended on improvements of the nature described outside the Swamp Creek  
15 watershed, so long as they are within either Snohomish County or the Lake Washington  
16 watershed.

17 J. Not later than October 1, 2017, the County will modify the culvert under the Verizon cell  
18 tower access road to prevent overtopping and rilling of surface flow.

19 8. Not later than 30 days after the entry of this Consent Decree, Snohomish County  
20 will pay \$125,000 (ONE HUNDRED, TWENTY-FIVE THOUSAND DOLLARS) to EarthCorps,  
21 as described in Attachment C to this Consent Decree, for environmental benefit projects in the  
22 Snohomish County Swamp Creek watershed. Payment will be made to the order of and delivered  
23 to EarthCorps. Payment shall include the following reference in a cover letter or on the check:  
24 "Consent Decree, Sno-King Watershed Council and Waste Action Project v. Snohomish County."  
25 A copy of each check and cover letter, if any, shall be sent simultaneously to Plaintiffs.  
26

9. Snohomish County will pay Plaintiffs' reasonable attorney and experts' fees and



1 costs in an amount not to exceed \$35,000, as indicated by invoices for attorney and expert witness  
2 fees and costs to be submitted to Snohomish County's counsel. Payment will be made within 7  
3 days of the entry of this decree or receipt of the fee documentation, whichever comes later, by  
4 check payable and mailed to Smith & Lowney, PLLC, 2317 E. John Street, Seattle, Washington  
5 98112, attn: Richard Smith. This payment is full and complete satisfaction of any claims Plaintiffs  
6 may have under the Clean Water Act for fees and costs.

7 10. A force majeure event is any event outside the reasonable control of Snohomish  
8 County that causes a delay in performing tasks required by this decree that cannot be cured by due  
9 diligence. Delay in performance of a task required by this decree caused by a force majeure event  
10 is not a failure to comply with the terms of this decree, provided that Snohomish County notifies  
11 Plaintiffs of the event; the steps that Snohomish County will take to perform the task; the  
12 projected time that will be needed to complete the task; and the measures that have been taken or  
13 will be taken to prevent or minimize any impacts to stormwater quality resulting from delay in  
14 completing the task.

15 Snohomish County will notify Plaintiffs of the occurrence of a force majeure event as  
16 soon as reasonably possible but, in any case, no later than fifteen days after the occurrence of the  
17 event. In such event, the time for performance of the task will be extended for a reasonable  
18 period of time following the force majeure event.

19 By way of example and not limitation, force majeure events include

- 20 a. Acts of God, war, insurrection, or civil disturbance;  
21 b. Earthquakes, landslides, fire, floods;  
22 c. Actions or inactions of third parties over which defendant has no control;  
23 d. Restraint by court order or order of public authority;  
24 e. Strikes; and  
25 f. Litigation, arbitration, or mediation that causes delay.

26 11. This court retains jurisdiction over this matter. While this decree remains in force,

1 this case may be reopened without filing fee so the parties may apply to the Court for any further  
2 order that may be necessary to enforce compliance with this decree or to resolve any dispute  
3 regarding the terms or conditions of this decree. In the event of a dispute regarding  
4 implementation of, or compliance with, this decree, the parties must first attempt to resolve the  
5 dispute by meeting to discuss the dispute and any suggested measures for resolving the dispute.  
6 Such a meeting should be held as soon as practical but must be held within thirty (30) days after  
7 notice of a request for such a meeting to the other party and its counsel of record. If no resolution  
8 is reached at that meeting or within thirty (30) days of the notice, whichever occurs first, either  
9 party may file a motion with this court to resolve the dispute. The provisions of section 505(d) of  
10 the Clean Water Act, 33 U.S.C. § 1365(d), regarding awards of costs of litigation (including  
11 reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party,  
12 shall apply to any proceedings seeking to enforce the terms and conditions of this Consent  
13 Decree.

14 12. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent  
15 judgment can be entered in a Clean Water Act suit in which the United States is not a party prior  
16 to forty-five (45) days following the receipt of a copy of the proposed consent judgment by the  
17 U.S. Attorney General and the Administrator of the U.S. EPA. Therefore, upon the signing of  
18 this Consent Decree by the parties, Plaintiffs shall serve copies of it upon the Administrator of the  
19 U.S. EPA and the Attorney General.

20 13. This Consent Decree takes effect upon entry by the court.

21 14. This Consent Decree terminates upon the County's completion of the actions in  
22 Paragraphs 7, 8, and 9 of this decree, except that the County's commitments regarding actions to  
23 be taken in the event of contingencies as described in paragraph 7.I. of this Consent Decree  
24 remain in effect as part of an enforceable contract between the parties. After completing the  
25 actions in Paragraphs 7, 8, and 9 of this Consent Decree, the County will serve upon Plaintiffs a  
26 Notice of Intent to Terminate the Consent Decree. Plaintiffs and the County shall confer

1 informally concerning the Notice and any disagreements as to compliance. If Plaintiffs agree that  
2 the County has completed the actions in Paragraphs 7, 8, and 9, the parties shall submit, for the  
3 Court's approval, a joint stipulation regarding termination. If Plaintiffs do not agree that the  
4 County has completed the actions in Paragraphs 7, 8, and 9, the County may serve and file a  
5 motion seeking termination of the Consent Decree.

6 15. This Consent Decree may not be used as evidence in any proceeding or as an  
7 admission or adjudication with respect to any allegations in the Complaint or any fact or  
8 conclusion of law with respect to any matter alleged in or arising out of the Complaint.

9 16. Both parties have participated in drafting this decree.

10 17. This Consent Decree may be modified only upon the approval of the court.

11 18. If for any reason the court should decline to approve this Consent Decree in the  
12 form presented, this Consent Decree is voidable at the discretion of Defendant or Plaintiffs. The  
13 parties agree to continue negotiations in good faith in an attempt to cure any objection raised by  
14 the court to entry of this Consent Decree.

15 19. Notifications required by this Consent Decree must be in writing. The sending  
16 party may use any of the following methods of delivery: (1) personal delivery; (2) registered or  
17 certified mail, in each case return receipt requested and postage prepaid; (3) a nationally  
18 recognized overnight courier, with all fees prepaid; or (4) e-mail. For a notice or other  
19 communication regarding this Consent Decree to be valid, it must be delivered to the receiving  
20 party at the addresses listed below or to any other address designated by the receiving party in a  
21 notice in accordance with this paragraph 19.

22 Richard A. Smith  
23 Smith & Lowney PLLC  
24 2317 East John St.  
25 Seattle, WA 98112  
Email: rasmithwa@igc.org

26 and to:

1 Pamela S. Van Swearingen  
2 Van Swearingen Law Office  
3 18229 84<sup>th</sup> Pl. W.  
4 Edmonds, WA 8026  
5 Email: pamela-vs1@comcast.net

6 **if to Snohomish County:**

7 Arif Ghouse, Director, Snohomish County Airport  
8 3220 100th Street SW,  
9 Everett, WA 98204  
10 Email: Arif.Ghouse@co.snohomish.wa.us

11 and to:

12 Christina Richmond  
13 Laura Kisielius  
14 Snohomish County Prosecutor's Office, Civil Division  
15 3000 Rockefeller Ave., M/S 504  
16 Everett, WA 98201  
17 Email: lkisielius@snoco.org, crichmond@snoco.org

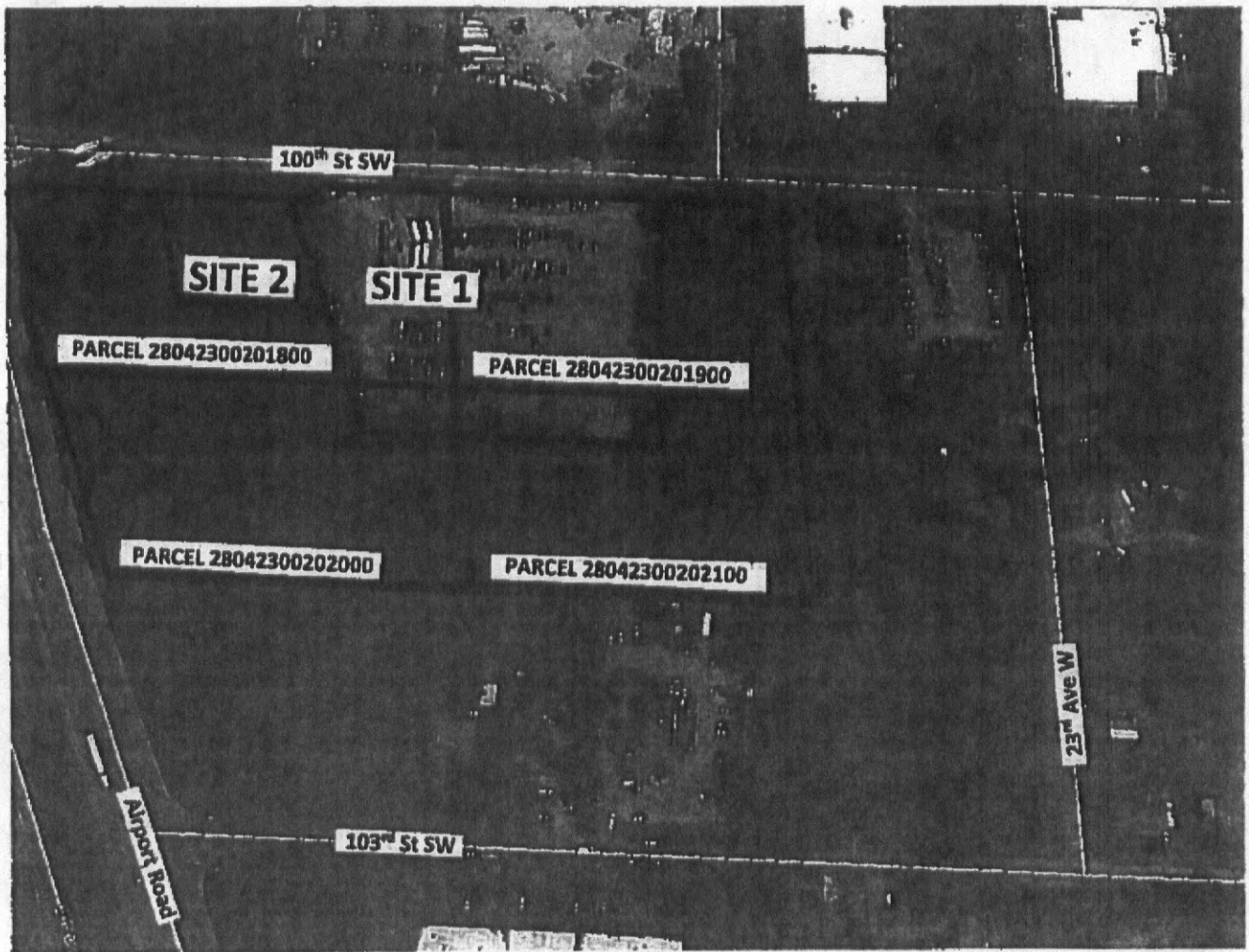
18 A notice or other communication regarding this Consent Decree will be effective when  
19 received unless the notice or other communication is received after 5:00 p.m. on a business day,  
20 or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the  
21 next business day. A notice or other communication will be deemed to have been received: (a) if  
22 it is delivered in person or sent by registered or certified mail or by nationally recognized  
23 overnight courier, upon receipt as indicated by the date on the signed receipt; or (b) if the  
24 receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of a  
25 change in address for which no notice was given, then upon that rejection, refusal, or inability to  
26 deliver; or (c) for notice provided via e-mail, upon receipt of a response by the party providing  
notice or other communication regarding this Consent Decree.



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DATED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
HON. JOHN C. COUGHENOUR  
UNITED STATES JUDGE



# Attachment A

Approximate Scale: 1" = 200'

# Attachment B

**Return Address:**

**Snohomish County Airport  
3220 100<sup>th</sup> St. SW, Suite A  
Everett, WA 98204**

**Document Title(s) (or transactions contained therein):**

1. Grant Deed of Conservation Easement

**Reference Number(s) of Related Documents: N/A****Grantor(s) (Last name first, then first name and initials):**

1. Snohomish County, a political subdivision of the State of Washington

**Grantee(s) (Last name first, then first name and initials):**

1. The Public

**Legal descriptions (abbreviated: i.e. lot, block, plat or section, township, range)**

A Portion of the NW ¼ of Section 23, Township 28 North, Range 4 East, WM

☒ Full legal description is contained in Exhibit A of document.

**Assessor's Property Tax Parcel/Account Numbers**

Portions of 28042300201800, 28042300202000, 00538200002701, and  
00538200002900



## GRANT DEED OF CONSERVATION EASEMENT

This GRANT DEED OF CONSERVATION EASEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington acting in its proprietary capacity ("Grantor"), and the people of Snohomish County, through Snohomish County, a political subdivision of the State of Washington acting in its governmental capacity ("Grantee").

### RECITALS

Whereas, Snohomish County is the fee owner of certain undeveloped real property in Snohomish County located at the headwaters of Swamp Creek, as more particularly described in Exhibit A to this Grant Deed of Conservation Easement (the "Easement Property") and depicted in Exhibit B to this Grant Deed of Conservation Easement. The Easement Property is owned in Snohomish County's proprietary capacity. The Easement Property contains a wetland commonly referred to as "Wetland ERR."

Whereas, real property owned by Snohomish County and adjacent to the Easement Property is the subject of a citizen suit brought under Section 505 of the Clean Water Act (33 U.S.C. § 1365). The case number of that citizen suit, entitled *Sno-King Watershed Council and Waste Action Project v. Snohomish County*, filed in United States District Court, Western District of Washington, is No. 2:16-cv-00318-JCC.

Whereas, in consideration of resolving the claims alleged in that citizen suit, Snohomish County agrees to protect the functions and values of Wetland ERR for the benefit of the public through this Grant Deed of Conservation Easement.

Whereas, under RCW 64.04.130, Snohomish County may hold an easement that limits the future use of land or improvement on the land. In that circumstance, Snohomish County acts in its governmental capacity, by holding the easement for the benefit of the public.

### AGREEMENT

#### 1. Conservation Easement

Grantor hereby grants to Grantee, for the benefit of the public, a perpetual negative easement in gross over, under, across and upon the Easement Property

("Conservation Easement"). The Easement Property shall remain in substantially its natural state for the purposes of environmental and habitat conservation, and, in particular, for the purpose of protecting the functions and values of Wetland ERR as they exist on the day on which this Grant Deed of Conservation Easement is made. Grantor shall at all times retain the right to possess, use and enjoy the Easement Property in any manner consistent with this Conservation Easement, as more fully described in paragraph 2. The rights, obligations, benefits and burdens described in this Conservation Easement are intended to touch and concern the Easement Property described in Exhibit A and depicted in Exhibit B of this Grant Deed of Conservation Easement. The burdens and obligations assumed by Grantor under this Grant Deed of Conservation Easement shall run with the Easement Property and be binding on Grantor's successors and assigns in title to the Easement Property. The Grant Deed of Conservation Easement is subject to all existing liens, encumbrances and other property rights which pre-exist the Conservation Easement.

The County shall record the Conservation Easement and it shall be memorialized on the ground as with steel rebar or pipe with surveyor's cap located at all angle points placed for future reference.

## **2. Reserved Rights**

2.1 Grantor reserves the right to use the Easement Property for any use that is not inconsistent with the purpose of the Conservation Easement. Permitted uses of the Easement Property include creating methods of access for resource conservation, restoration, management and maintenance purposes and activities; felling hazard trees as determined in writing by a licensed arborist; constructing and maintaining fences around the Easement Property so long as the design and location of the fences do not adversely impact the functions and values of Wetland ERR; managing wildlife to ensure safe aircraft operations; and protecting stormwater drainage functions of the Easement Property.

2.2 Grantor may install or approve the installation of signs as long as such signs comply with the Snohomish County Code and other applicable laws at the time the signs are installed.

2.3 Grantor may undertake any activities that are necessary to protect health and safety or prevent significant property damage on the Easement Property or adjacent properties or as may be required by a governmental agency, so long as Grantor first reasonably attempts to provide public notice prior to taking any such action and notice to the Sno-King Watershed Council and Waste Action Project

**3. No Access by the General Public**

This Conservation Easement does not create any right of entry or access in favor of the general public in, on, over or to any portion of the Easement Property. Grantor may, however, invite members of the public on the Easement Property for the purpose of habitat maintenance, habitat restoration or environmental education.

**4. Inspection and Enforcement**

4.1 The Easement Property is and will be managed by, and the Conservation Easement administered by, the Snohomish County Airport or its successor. The Snohomish County Department of Public Works, Surface Water Management Division, or its successor, may, but is not required to, inspect the Easement Property to determine whether it is being managed consistent with the Conservation Easement.

4.2 This Grant Deed for Conservation Easement shall be governed by, and construed in accordance with, the laws of the State of Washington. Venue for any dispute involving this Grant Deed for Conservation Easement shall be the Superior Court in and for the County of Snohomish.

4.3 Nothing contained in this Grant Deed for Conservation Easement shall be construed to mandate that Grantor abate, correct or restore any condition on the Easement Property resulting from actions by a trespasser upon the Easement Property or causes beyond Grantor's control, including, without limitation, natural disaster, fire, flood, storm, pest infestation, earth movement, and climate change, and from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate serious injury to the Easement Property resulting from such causes.

**5. Termination**

5.1 This Conservation Easement terminates when Central Puget Sound Regional Transit Authority ("Sound Transit"), the successor agency of Sound Transit, or any other regional transportation agency, including Community Transit and Everett Transit, determines that all or substantially all of the Easement Property is necessary for light rail or any other regional transportation project. At such time Grantor receives notice that a regional transportation agency, including Sound Transit, Community Transit and Everett Transit, intends to negotiate for or

initiate proceedings under threat of eminent domain, Grantor may record a Termination of Conservation Easement.

5.2 In the event of an eminent domain action on less than that portion of the Easement Property contemplated in paragraph 5.1, this Conservation Easement shall remain in effect as to those parts of the Easement Property that are not necessary for light rail or any other regional transportation project.

5.3 If circumstances other than those described in paragraphs 5.1 and 5.2 arise in the future that render the purposes of this Conservation Easement impossible to accomplish under any interpretation of this Grant Deed for Conservation Easement, then Grantor may seek the termination and extinguishment of this Grant Deed for Conservation Easement and the Conservation Easement by judicial proceedings in a court of competent jurisdiction.

**6. Assignment by Snohomish County**

Snohomish County shall have the right, at any time and in its sole discretion, to assign and transfer its interest in and to this Grant Deed of Conservation Easement and Conservation Easement to any entity that is then authorized by RCW 64.04.130 or other Washington law to hold the beneficiary's interest in the Conservation Easement. The assignment shall be in writing and shall be duly recorded in the real property records of Snohomish County.

**7. Exhibits**

The following Exhibits, which are attached to the Grant Deed of Conservation Easement, are incorporated herein and by this reference made a part of this Grant Deed of Conservation Easement:

Exhibit A – Legal Description of Easement Property

Exhibit B – Diagram Map Depicting Easement Property

**8. No Third Party Beneficiaries**

This Grant Deed of Conservation Easement and Conservation Easement is for the sole benefit of Grantor and Grantee. No other persons or parties shall be deemed to have any rights in, under, or to the Grant Deed of Conservation Easement and Conservation Easement.

**9. No Merger**



It is the intent of the parties that no merger of title shall take place that would merge the restrictions of this Conservation Easement with fee title to the Easement Property, and that the restrictions on the use of the Easement Property, as embodied in this Conservation Easement, shall become and remain permanent and perpetual restrictions on the use of the Easement Property as described in and subject to the terms of this Grant Deed of Conservation Easement.

IN WITNESS WHEREOF, Snohomish County has executed this Grant  
Deed of Conservation Easement as of the day and year first above written.

Snohomish County, a political  
subdivision of the State of Washington

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

*[The remainder of this page is intentionally left blank.]*

STATE OF WASHINGTON    )  
  ) ss.  
COUNTY OF SNOHOMISH    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the person who signed as \_\_\_\_\_ of \_\_\_\_\_ that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that \_\_\_\_\_ was duly elected, qualified and acting as said officer or member of the company, and that \_\_\_\_\_ was authorized to execute said instrument on behalf of said company.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_.  
My appointment expires: \_\_\_\_\_.

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**Exhibit A**

**Legal Description of Easement Property**



Paine Field Airport – Sector 3  
RR9306-105  
July 14, 2016

## EXHIBIT "A"

### Wetland Conservation Easement:

Lots 27, 28, & 29 of the Plat of Paine Field No. 5 filed in Volume 14 of Plats at Page 85, Records of Snohomish County, Washington;

**TOGETHER WITH** the following described parcel:

All those portions, as shown on the attached Exhibit B, of Lots 1 & 3 of the Binding Site Plan developed for Paine Field Airport Sector 3, recorded under Auditor's File No. 200812105002 in the Records of Snohomish County, Washington, said portions lying South and West of the following described line:

**BEGINNING** at a point in the southerly line of said Lot 3, from which point the southeasterly corner of said Lot 3 bears South 88°08'54" East a distance of 55.10 feet;

Thence, from said **POINT OF BEGINNING (POB)**, leaving the southerly line of said Lot 3, North 18°25'00" West a distance of 26.3 feet;

Thence North 36°55'00" East a distance of 61.3 feet;

Thence North 02°35'30" East a distance of 71.8 feet;

Thence North 28°52'30" West a distance of 109.0 feet;

Thence North 20°57'30" West a distance of 161.0 feet;

Thence North 86°50'20" West a distance of 224.7 feet;

Thence North 63°26'00" West a distance of 52.5 feet;

Thence North 30°25'00" West a distance of 43.2 feet;

Thence North 01°32'30" West a distance of 68.2 feet;

Thence North 11°21'44" West a distance of 82.8 feet to a point in the southerly margin of 100<sup>th</sup> Street SW, and the end of the herein described line, said point lying 276.62 feet westerly of an angle point in said southerly margin, and about 465 feet westerly of the Northeast corner of said Lot 1;

Containing 7.36 acres, more or less.

*Riis Fitzalan Hotson*

Riis Fitzalan Hotson PLS 42435

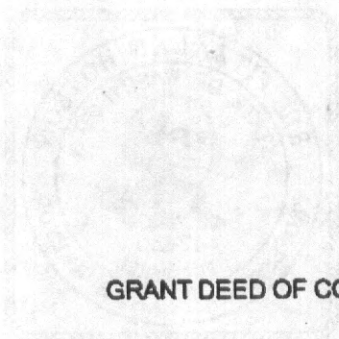
7-14-16

Date



**EXHIBIT B**

### Diagram Map Depicting Easement Property



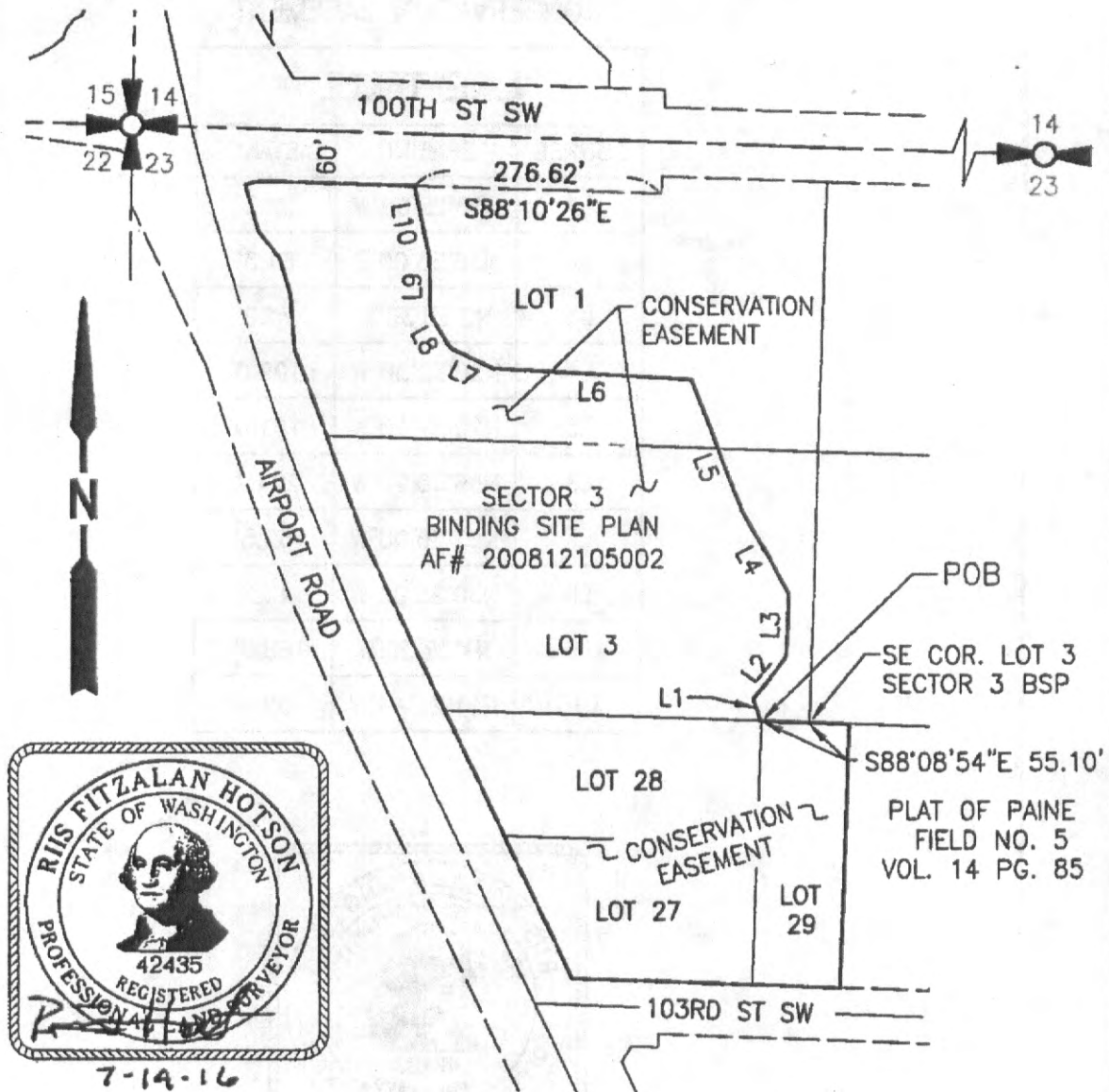
# EXHIBIT B

PAINE FIELD AIRPORT - SECTOR 3  
RR9306-105

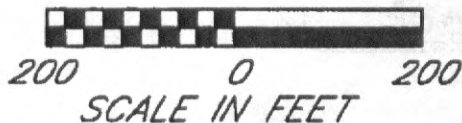
PAGE 1 OF 2



SEC. 23, T. 28 N., R. 04 E., W.M.



7-14-16



TOTAL EASEMENT AREA = 7.36± ACRES

# EXHIBIT B

PAINE FIELD AIRPORT - SECTOR 3  
RR9306-105

PAGE 2 OF 2



SEC. 23, T. 28 N., R. 04 E., W.M.

## CONSERVATION EASEMENT

LINE TABLE		
COURSE	BEARING	DISTANCE
L1	N18°25'00"W	26.3'
L2	N36°55'00"E	61.3'
L3	N2°35'30"E	71.8'
L4	N28°52'30"W	109.0'
L5	N20°57'30"W	161.0'
L6	N86°50'20"W	224.7'
L7	N63°26'00"W	52.5'
L8	N30°25'00"W	43.2'
L9	N1°32'30"W	68.2'
L10	N11°21'44"W	82.8'



7-14-16



# Attachment C

July 12, 2016

RE: Waste Action Project- Snohomish County

To Whom It May Concern:

EarthCorps is a community-based organization dedicated to protecting and restoring local watershed lands around Puget Sound. We are a 501(c)3 nonprofit founded in 1993. With a \$2.8 million budget, EarthCorps operates with a professional staff of 20 as well as up to 50 young adult corps members who participate in an intensive yearlong training and service program. EarthCorps' work is focused on environmental restoration and Green Stormwater Infrastructure development/maintenance.

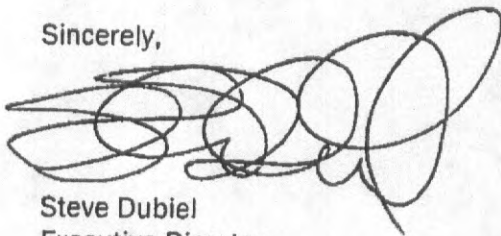
The funding provided by Snohomish County will be used to improve water quality in Snohomish County with a specific focus on the Swamp Creek Watershed. EarthCorps will partner with Farmer Frog, a community-based 501(c)3 nonprofit organization, as a sub-grantee and whose mission includes educating communities through local environmental programs, environmental restoration and preservation projects. The work will focus on community outreach, rain garden design, construction, and maintenance/stewardship.

All money received as part of this agreement will be used for this project and materials. No money will be spent for political lobbying activities. This project will benefit water quality. We plan to work with young adult corps members who participate in EarthCorps' training and service program and possibly with community volunteers.

EarthCorps will report back to Snohomish County, Department of Justice, Sno-King Watershed Council, and Waste Action Project upon completion of the described project.

Please do not hesitate to contact me with questions or for additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Dubiel', with a large, stylized flourish extending from the end of the signature.

Steve Dubiel  
Executive Director

**LOCAL RESTORATION | GLOBAL LEADERSHIP**

6310 NE 74th Street, Suite 201E Seattle, WA 98115 phone 206.322 9296 fax 206.322 9312 [www.earthcorps.org](http://www.earthcorps.org)